

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Universal Service Contribution)	WC Docket No. 06-122
Methodology)	
)	
Request for Review by IVANS, Inc.)	
of)	
Decision of the Universal Service)	
Administrator)	

COMMENTS OF AT&T

AT&T Inc., on behalf of its affiliates that contribute to the federal universal service support mechanisms (collectively, AT&T), hereby submit these comments in support of IVANS, Inc.'s request for review of certain decisions by the Universal Service Administrative Company (USAC).¹ IVANS has been an AT&T customer for many years. As AT&T explained in a letter provided to IVANS earlier this year, because AT&T had no reasonable expectation that IVANS was a direct contributor to the federal universal service support mechanisms, AT&T appropriately treated IVANS as an end-user customer. As such, AT&T reported the interstate telecommunications revenue it received from IVANS in its federal universal service contribution

¹ Request for Review by IVANS, Inc. of Decision of the Universal Service Administrator; Petition for Declaratory Ruling on the Assessability of Certain Information Services, WC Docket No. 06-122 (filed Aug. 6, 2013) (Petition).

base.² IVANS has since determined that, for purposes of universal service contributions, it should treat the service it purchases from AT&T in the same manner as AT&T treats it.³

In April, IVANS filed FCC Forms 499-A with USAC, reporting revenues from 2008 to 2013.⁴ The methodology that IVANS used for these filings was to treat the amounts that AT&T already included its contribution base as non-assessable and the difference between IVANS' revenues from customer payments and the amount it paid AT&T as assessable.⁵ In other words, IVANS only reported the revenue associated with its mark-up in its contribution base.⁶ USAC rejected IVANS' filings and directed it to report as assessable the revenue on which AT&T previously contributed and "file FCC Forms 499-A back to the date it first began providing telecommunications services."⁷ According to IVANS, USAC rejected IVANS' filings because USAC is not required to resolve double collection issues reported by resellers, citing a 2007 Wireline Competition Bureau (Bureau) decision; IVANS failed to present sufficient evidence of a double collection; and IVANS failed to properly report all of its gross revenue because it reported the revenue on which AT&T previously contributed as "non-assessable."⁸

² Petition at Attach. 2, Exh. 4 (Letter from John J. Malone, AT&T, to Jeff Dobish, IVANS (dated March 19, 2013)).

³ Petition at 6. IVANS has provided AT&T with a universal service reseller certificate that complies with the Commission's requirements and AT&T now treats IVANS as a reseller.

⁴ Petition at Attach. 3.

⁵ Petition at 8.

⁶ For example, AT&T sold IVANS (which was until recently an end-user customer) an interstate telecommunications service for \$75 and reported this revenue in its contribution base. IVANS resells AT&T's service to its customer for \$100, a mark-up of \$25. In the FCC Forms 499-A it submitted to USAC in April, IVANS reported that \$25 in its contribution base and reported the \$75 as non-assessable revenue.

⁷ Petition at 9.

⁸ *Id.* at 10.

AT&T agrees with IVANS that the Commission should direct USAC to apply its findings on double collections from its *Wholesaler-Reseller Clarification Order* to the scenario presented here.⁹ In the *Wholesaler-Reseller Clarification Order*, the Commission determined that “if a wholesale provider’s customer actually contributed, USAC should not attempt to recover contributions from the wholesale provider on the subject revenues, even if the wholesale provider cannot demonstrate that it had a reasonable expectation that its customer would contribute when it filed the Form 499 revenue data.”¹⁰ The Commission further found that “USAC should consider evidence offered by the wholesale provider, including sworn reseller certifications (‘confirmatory’ certificates)” in evaluating whether a double collection occurred or will occur.¹¹ True, with IVANS, it is not the wholesale provider arguing that it should not be compelled to contribute because its customer, the reseller, already contributed on that same revenue, which was the scenario the Commission addressed in the *Wholesaler-Reseller Clarification Order*. However, the fact that it is the reseller, not the wholesale provider, arguing against the double collection is a distinction without difference: To give meaning to the Commission’s policy that “the same revenue should not be assessed twice for USF contributions purposes,”¹² the Commission should direct USAC to consider “clear and convincing evidence” that shows a reseller’s wholesale provider already contributed on the subject revenues.

To enable IVANS to satisfy the Commission’s clear and convincing standard, AT&T is willing to review the revenue figures supplied by IVANS and confirm or correct the amounts

⁹ *Id.* at 11-14 (citing *Universal Service Contribution Methodology*, WC Docket No. 06-122, Order, 27 FCC Rcd 13780 (2012) (*Wholesaler-Reseller Clarification Order*)).

¹⁰ *Wholesaler-Reseller Clarification Order* at ¶ 44.

¹¹ *Id.* at ¶ 45.

¹² *Id.* at ¶ 44.

IVANS states were the revenues that AT&T reported in its contribution base.¹³ AT&T then will certify under penalty of perjury that it did indeed report those amounts in its USF contribution base. Consistent with the *Wholesaler-Reseller Clarification Order*, the Commission should conclude that such a “confirmatory” certificate from IVANS’ wholesale provider is all that USAC will need to avoid double collecting from IVANS. IVANS is correct that, through its 2012 *Wholesaler-Reseller Clarification Order*, the Commission implicitly rejected the Bureau’s 2007 finding that USAC would have to perform audits of both the reseller and the wholesale provider to ascertain whether the same revenues were subject to a double collection.¹⁴

AT&T also agrees with IVANS that the Commission should not require it to file worksheets going back to 1998, when IVANS states that it began reselling AT&T’s service.¹⁵ Instead, at most, the Commission should require it to go back five years, which is consistent with the Commission’s document retention rule applicable to universal service contributors and its administrative limitations period for USF audits.¹⁶ We note that at least one other contributor, Verizon, filed a detailed analysis with the Commission explaining the basis for its belief that the

¹³ See Petition at 8, Table 1, Column 3.

¹⁴ Petition at 11-12 (citing *American Telecommunications Systems, Inc. et al.*, CC Docket No. 96-45, Order, 22 FCC Rcd 5009 (WCB 2007)). In that wrongly decided Bureau order, the Bureau concluded that parties must sort out double collection issues themselves and a disgruntled party’s recourse is to pursue litigation. Of course, as IVANS notes in its Petition, the Bureau has singlehandedly hamstrung parties’ ability to resolve double collection issues themselves by prohibiting contributors from seeking refunds going back more than one year after the due date of the original FCC Form 499-A filing. Petition at 14. One of AT&T’s legacy affiliates filed an application for review of this unlawful Bureau order in January 2005 but, to date, Commission has failed to address it. See *SBC Communications Inc. Application for Review of Action Taken Pursuant to Delegated Authority*, CC Docket Nos. 96-45, 98-171, 97-21 (filed Jan. 10, 2005). AT&T urges the Commission to address this long-pending appeal and overturn the Bureau’s unlawful asymmetrical FCC Form 499 revision deadline.

¹⁵ Petition at 5, 19.

¹⁶ 47 C.F.R. § 54.706(e). Petition at 23, n.93 (citing the Commission’s *USAC Management Order*, 22 FCC Rcd 16372, ¶ 28 (2007)).

applicable statute of limitations for USF contributors is four years.¹⁷ All parties would benefit by the Commission resolving this discrepancy and ensuring that contributors abide by the same statute of limitations.

For the reasons provided above, the Commission should direct USAC to apply its *Wholesaler-Reseller Clarification Order* double collection findings to the scenario presented here and accept a confirmatory certificate from a wholesale provider as clear and convincing evidence that the wholesale provider previously contributed on the subject revenue. The Commission also should clarify that the applicable USF contributor statute of limitations is no greater than five years.

Respectfully Submitted,

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¹⁷ See Letter from Alan Buzacott, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 06-122 (filed Oct. 25, 2012).